

AMENDED IN SENATE FEBRUARY 28, 2006

**SENATE BILL**

**No. 1207**

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**Introduced by Senator Alarcon**

January 26, 2006

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An act to amend Section 708 of, and to add Section 708.5 to, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1207, as amended, Alarcon. Corporations: contested and uncontested elections of directors.

Existing law provides that, in any election of the members of the board of directors of a corporation, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected.

This bill would make that provision applicable only to a contested election of directors, as defined; whereas, in an uncontested election of directors, as defined, approval by a majority of the shares represented and voting would be required to elect each director, except in certain circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 708 of the Corporations Code is  
2     amended to read:  
3     708. (a) Except as provided in Section 301.5, every  
4     shareholder complying with subdivision (b) and entitled to vote  
5     at a contested election of directors may cumulate such

1 shareholder's votes and give one candidate a number of votes  
2 equal to the number of directors to be elected multiplied by the  
3 number of votes to which the shareholder's shares are normally  
4 entitled, or distribute the shareholder's votes on the same  
5 principle among as many candidates as the shareholder thinks fit.

6 (b) No shareholder shall be entitled to cumulate votes (i.e.,  
7 cast for any candidate a number of votes greater than the number  
8 of votes that the shareholder normally is entitled to cast) unless  
9 the candidate or candidates' names have been placed in  
10 nomination prior to the voting and the shareholder has given  
11 notice at the meeting prior to the voting of the shareholder's  
12 intention to cumulate the shareholder's votes. If any one  
13 shareholder has given that notice, all shareholders may cumulate  
14 their votes for candidates in nomination.

15 (c) In a contested election of directors, the candidates  
16 receiving the highest number of affirmative votes of the shares  
17 entitled to be voted for them up to the number of directors to be  
18 elected by those shares are elected; votes against the director and  
19 votes withheld shall have no legal effect. For purposes of this  
20 section, "contested election" means an election in which the  
21 number of nominees exceeds the number of vacant positions on  
22 the board of directors.

23 (d) Subdivision (a) applies to the shareholders of any mutual  
24 water company organized or existing for the purpose of  
25 delivering water to its shareholders at cost on lands located  
26 within the boundaries of one or more reclamation districts now or  
27 hereafter legally existing in this state and created by or formed  
28 under the provisions of any statute of this state, but does not  
29 otherwise apply to the shareholders of mutual water companies  
30 unless their articles or bylaws so provide.

31 (e) Elections for directors need not be by ballot unless a  
32 shareholder demands election by ballot at the meeting and before  
33 the voting begins or unless the bylaws so require.

34 SEC. 2. Section 708.5 is added to the Corporations Code, to  
35 read:

36 708.5. (a) For purposes of this section, "uncontested  
37 election" means an election in which the number of nominees  
38 does not exceed the number of vacant positions on the board of  
39 directors.

1 (b) In an uncontested election of directors, approval of the  
2 shareholders, as specified in Section 153, shall be required to  
3 elect a director. Votes against the director and votes withheld  
4 shall have legal effect.

5 (c) A corporation may amend its bylaws to provide that  
6 uncontested elections of directors shall instead be conducted in  
7 the manner specified in Section 708, however, this amendment  
8 shall require approval of the outstanding shares, as specified in  
9 Section 152.

10 (d) Notwithstanding subdivision (b) of Section 301, if, in an  
11 uncontested election where approval of the shareholders is  
12 required, an incumbent director fails to be approved by the  
13 shareholders, then the incumbent director shall resign within 90  
14 days and the board ~~may~~ *shall* declare vacant the office of that  
15 director. *The vacancies on the board shall be filled in accordance*  
16 *with the procedures set forth in Section 305. A candidate in an*  
17 *uncontested election who fails to be approved by the*  
18 *shareholders shall not be appointed to fill a vacancy on the*  
19 *board.*